IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION No. 11986 of 2004

Between:

M/s Vishnu Builders, rep.by its Proprietor G.V.N.Sitaramaiah,
Tomia Towers, Ground Floor, Opp. Nirmala convent, Patamata,
Vijayawada.

..... PETITIONER

AND

1 The Commissioner, Municipal Corporation of Vijayawada,
Vijayawada.
2 The Special Officer Competent Authority, Urban Land Ceilings,

Opp.Jai Hind Talkies, V.M.C.Complex, Vijayawada.
3 M/s Dameria Concerns Dall and Oil Mills, Damera Nagar, Opp.

Dhanekula Kalyanamandapam, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or Order or a direction more particularly one in the nature of Writ of Mandamus declaring the action of respondent No.1 in issuing proceedings No.Rc.B.A.No.1188/2004 dated 7-7-2004, as illegal, arbitrary, without authority of law, without jurisdiction, violative of principles of natural justice and in violation of Article 14 of the Constitution of India and consequently set aside the same.

Counsel for the Petitioner : Mr.V.V.ANIL KUMAR

Counsel for Respondent No.1 : Mr.T.S. VENKATA RAMANA

Counsel for Respondent Nos.2&3: None appeared

The Court made the following :

ORDER :

In this writ petition, the petitioner has challenged the proceedings dated 7.7.2004 issued by the first respondent-Municipal Corporation keeping in abeyance the permission granted to him for construction of residential apartment, as illegal and arbitrary.

The petitioner, namely M/s. Vishnu Builders, is a construction firm engaged in the business of construction of residential and commercial buildings. While respondent No.3, namely M/s. Dameria Concens Dall and Oil Mills, is the owner of an extent of 7,659 Sq. yards of land in R.S. Nos. 228/1/1 and 229/3 in Patamata, Vijayawada. The said land, by order dated 1.5.2004 was declared by respondent No.2, namely Special Officer and Competent Authority, Urban Land Ceilings, to be within the ceiling limit. Pursuant to the said order, respondent No.3 requested respondent No.2 to grant permission to sell the land. Acting on the said request, respondent No.2, vide his orders dated 15.5.2004, while informing respondent No.3 that he has no wish to exercise first option to purchase the land, granted permission to sell the land. On the basis of the said permission, the petitioner purchased the land in question from respondent No.3, and after obtaining permission from respondent No. 1, namely Municipal Corporation of Vijayawada, on 10-6-2004, started construction of a building therein by investing huge amounts and mobilizing men and machinery. While the construction was in progress, respondent No.1, purporting to act on a news item, which appeared in Vaartha daily dated 2.7.2004, issued the impugned orders dated 7-7-2004 keeping the permission granted for construction of building, in abeyance.

Heard the learned counsel for petitioner and Sri T.S. Venkata Ramana, learned Standing Counsel for respondent No.1 and at their request, the writ petition is disposed of at the stage of admission.

The learned counsel for the petitioner submits that the action of respondent No.1 in issuing the impugned proceedings, keeping the permission granted to the petitioner for construction of building in abeyance, basing on a news item, which reported that the permission granted by the Urban Land Ceiling authorities to respondent No.3 for selling the land which was declared as surplus, was fraught with illegalities, and ignoring the clarification published by the very same newspaper subsequently stating that the grant of permission under the Urban Land Ceiling (Regulation) Act, 1976 (for short 'the ULC Act') is correct and in accordance with law, is illegal and arbitrary. At any rate, he submitted that respondent No.1 could not have passed the impugned order for the irregularities if any committed by the Urban Land Ceiling authorities in the grant of permission to respondent No.3 to sell their land, which was purchased by the petitioner.

On the other hand, the learned Standing Counsel representing respondent No.1

supported the impugned order. He submitted that the impugned order, apart from the news item, has its basis on the irregularities found by respondent No.1 in the permission granted by respondent No.2 to respondent No.3 to sell the land, and therefore, no interference is called for therewith.

As can be seen from the impugned order, respondent No.1 has issued the impugned order keeping the construction permission granted to the petitioner in abeyance, on the basis of a news item, which is in the nature of hearsay evidence, and that too without issuing any notice and without conducting any enquiry and without providing the petitioner an opportunity of hearing. The petitioner, admittedly, started the construction of the building after obtaining due permission from respondent No.1 under the provisions of the Hyderabad Municipal Corporation Act, 1955, which is even applicable to the Vijayawada Municipal Corporation. If the petitioner had made or is making construction in deviation of the sanctioned plan, then it is always open for respondent No.1 to take necessary action against the petitioner, after issuing notice to him. However, if respondent No.1 had noticed any irregularities in the grant of permission to respondent No.3 for sale of their land under the provisions of the ULC Act, he should have brought the same to the notice of respondent No.2 for taking necessary action. But, by passing the impugned order, respondent No.1 sought to assume the role of an appellate authority over the permission granted by respondent No.2 under the provisions of the ULC Act. If any irregularities, as alleged in the news item, were found in the grant of permission under the ULC laws, it is for the authorities under the ULC Act, to enquire into the same and take necessary action, but certainly respondent No.1, who is not concerned with the grant of permission under the ULC Act, could not have kept the permission granted by him to the petitioner for construction of the building, which was obtained in accordance with the Rules governing thereof, in abeyance, on the ground that there was an adverse news item with respect to grant of permission by the authorities under the ULC Act, which admittedly is an hearsay evidence.

In the circumstances, the impugned order cannot be sustained, and is therefore, quashed and set aside. The writ petition is allowed, and it is observed that this order will not preclude the respondents from taking necessary action in accordance with law after issuing notice to the petitioner. No costs.

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N.V.RAMANA,J

ASP/DA

15th July 2004.

To

1 The Commissioner, Municipal Corporation of Vijayawada, Vijayawada.
2 The Special Officer Competent Authority, Urban Land Ceilings,

Opp.Jai Hind Talkies, V.M.C.Complex, Vijayawada.
3 M/s Dameria Concerns Dall and Oil Mills, Damera Nagar, Opp.

Dhanekula Kalyanamandapam, Vijayawada.

4 Two CD copies.